

Supplemental Letter of Findings: 04-20110331
Gross Retail Tax
For the Years 2007, 2008, and 2009

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ISSUE

I. Flooring Sales – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; IC § 6-8.1-3-12(b); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department of Revenue overestimated the amount of its Indiana sales when it determined that Taxpayer owed additional gross retail (sales) tax.

STATEMENT OF FACTS

Taxpayer is an Indiana company which sells flooring. Taxpayer sells flooring to Indiana customers and to out-of-state customers. Taxpayer purportedly sells flooring by means of Internet advertising. On occasion, Taxpayer sells only the flooring to its customers. On other occasions, Taxpayer both sells and installs the flooring.

The Department of Revenue (Department) conducted an audit review of Taxpayer's business records. The audit resulted in the assessment of additional sales tax. Taxpayer protested, an administrative hearing was conducted, and a Letter of Findings issued. The Letter of Findings denied Taxpayer's protest. Taxpayer believed the decision was incorrect and asked for and was granted a rehearing on the matter. A second administrative hearing was conducted and this Supplemental Letter of Findings results.

I. Flooring Sales – Gross Retail Tax.

DISCUSSION

Taxpayer sells flooring materials. According to the audit report, "[T]axpayer's primary sales medium is via [I]nternet sales." The audit report noted that "[T]axpayer did not maintain most records such as sales and purchase invoices." Despite Taxpayer's attempt to reconstruct its sales records, the audit concluded that "[T]axpayer's records were still incomplete."

In the absence of complete sales records, the audit relied upon a projection methodology. Taxpayer signed an "Agreement for Projecting Audit Results." The agreement contained a description of the proposed projection which relied upon a sample of two average months "to arrive at a percentage error for each audit year." Upon closer examination of the records which were available, the audit found that Taxpayer's "sales tax returns did not match [bank] deposits for most of the audit period."

The audit resulted in an assessment of approximately \$6,400 in additional sales tax. Taxpayer protested countering with "an average projection based on the amount [Taxpayer] did pay." Taxpayer's own methodology suggested that the actual amount owed was \$840. (During the supplemental administrative hearing, Taxpayer reduced this amount to approximately \$200.)

The original Letter of Findings (LOF) rejected Taxpayer's argument concluding that:

Taxpayer may argue that a different set of sampling population resulted in a lesser tax liability but it failed to demonstrate the clear error on the part of the audit. Both Taxpayer and the Department agreed to and, therefore, were bound by the [original] projection result....

In its request for rehearing, Taxpayer argued that the LOF was based solely on the Hearing Officer's "predisposition to deny [the] appeal prior to receiving all the information."

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

A retail merchant, such as Taxpayer, merely collects this tax as an agent for the state. IC § 6-2.5-2-1(b). Consequently, the retail merchant "holds the taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3.

An Indiana merchant is required to maintain complete and accurate sales records. IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Because Taxpayer did not maintain complete and accurate sales records, the audit resorted to a projection methodology. This alternative is authorized under Indiana law. IC § 6-8.1-3-12(b) provides as follows:

The department may audit any returns with respect to the listed taxes using statistical sampling. If the taxpayer and the department agree to a sampling method to be used, the sampling method is binding on the taxpayer and the department in determining the total amount of additional tax due or amounts to be refunded. (Emphasis added).

Taxpayer makes objections too numerous to enumerate but the issue is whether Taxpayer has met its burden of demonstrating that the original assessment was incorrect. To that end, Taxpayer has provided 14 invoices evidencing sales to Indiana customers along with four pages entitled "Selected Fields [f]rom Sales Sample Month" which Taxpayer concludes are sufficient to establish that it owes approximately \$200 in additional sales tax.

The Department has no reason to call into question the documents provided but must question whether the records are sufficient to establish that the original assessment was incorrect. Taxpayer's representative admits that "I may have missed some sales due to my bookkeeping...." and asks the Department to overlook what he admits is Taxpayer's "sloppy books for the past few years...."

Taxpayer asks the Department to rely on Taxpayer's scanty records, overturn the audit's reasoned conclusion, and arbitrarily determine an alternative assessment somewhere between \$6,400 and \$200 which is "fair and reasonable...." Taxpayer asks too much.

FINDING

Taxpayer's protest is respectfully denied.

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